

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)
Plaintiff)
)
v.) 08-CR-30020-MAP
)
RAUL PANTOJA,)
Defendant)

MEMORANDUM AND ORDER REGARDING
MOTION FOR CERTIFICATE OF APPEALABILITY
(Dkt. No. 193)

October 28, 2010

PONSOR, D.J.

On April 1, 2009, following a guilty plea, Defendant was sentenced to 70 months imprisonment for possession with intent to distribute and distribution of cocaine base. On April 2, 2010, Defendant filed a Motion to Vacate his sentence pursuant to 28 U.S.C. § 2255, arguing that he was denied effective assistance of counsel and that the court failed to recognize that it had discretion to consider the crack/powder disparity in weighing his sentence.

On July 8, 2010, the court issued its order denying Defendant's motion, noting that Defendant did receive very competent assistance from his attorney and that the court explicitly recognized the crack/powder sentencing disparity as providing a ground for a sentence below the Guidelines range. In fact, the court varied its sentence below the Guidelines range for that reason.

On September 27, 2010, Defendant filed a Motion for Issuance of a Certificate of Appealability (Dkt. No. 193). That motion must be denied. For the reasons set forth in the court's memorandum denying the original § 2255 petition, the motion simply lacks any support. Petitioner has not raised issues which are debatable among jurists of reason, in the sense that some other court could resolve this in a manner different than I did. Unfortunately for Petitioner, his petition simply does not raise questions which deserve encouragement to proceed further on appeal.

Accordingly, Defendant's Motion for Certificate of Appealability (Dkt No. 193) is hereby DENIED.

It is So Ordered.

/s/ Michael A. Ponsor
MICHAEL A. PONSOR
U. S. District Judge